

**HIGH COURT OF JAMMU AND KASHMIR AND LADAKH
AT JAMMU**

WP(C) No. 728/2023

Pardeep Kumar and another

....applicant

Through :- Mr. S.S.Ahmed advocate
Mr. Rahul Raina Advocate.

V/s

UT of Jammu and Kashmir and ors

Through :- Ms Chetna Manhas Advocate vice
Ms Monika Kohli Sr.AAG
Mr. Rajnish Raina Advocate.

CORAM:

HON'BLE MS. JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

JUDGMENT(ORAL)

1 By this petition under Article 226 of the Constitution of India, the petitioners are seeking issuance of an appropriate writ, order or direction, including the following reliefs:

- (i) Commanding respondent No.2 to issue a formal NOC in favour of the petitioners for onward submission to respondent No. 4 for facilitating the renewal of the Registration Certificate for Hotel Natraj International, Karlah, Patnitop under the Jammu and Kashmir Registration of Tourist Trade Act, 1978. The earlier certificate of registration expired on 31.12.2022, and respondent No.2 is illegally and arbitrarily withholding the petitioners' application dated 14.12.2022, despite reminders dated 27.12.2022 and 06.02.2023 regarding issuance of NOC.
- (ii) Commanding respondent No.4 to issue the renewed Certificate of Registration under the Jammu and Kashmir Registration of Tourist Trade Act, 1978, in favour of Hotel Natraj International Karlah, Patnitop, w.e.f 01.01.2023

Factual matrix:

2 The petitioners are partners of Hotez Natraj International, situated at Karlah, opposite Nag Temple, Patnitop. They have assumed control and management of the said Hotel by virtue of a Reconstitution Deed dated 30.03.2015, registered before the Sub-Registrar, Chenani. A copy of the deed is annexed with the writ petition. Since 2016, the said Hotel has been functioning smoothly. However, on 04.12.2020, respondent No.2 issued a show cause notice under the J&K Control of Building Operations Act. The petitioners duly submitted a detailed reply to the said notice. Subsequently, they were directed to demolish certain alleged violations. Aggrieved, the petitioners filed a statutory appeal before the J&K Special Tribunal, which was dismissed vide order dated 30.11.2021.

3 Challenging the said dismissal, the petitioners filed WP(C) No. 1125/2022, wherein a Division Bench of this Court passed an interim order dated 25.05.2022, restraining demolition regarding the alleged violations. It is also relevant to mention that PIL No. 22/2018 is pending before this Court. However, no direction has been passed in that PIL restraining the renewal of registration certificates under the Tourist Trade Act. It is stated that the pendency of the said PIL cannot be used as a ground to deny the petitioners the renewal of registration. The matter was entrusted to CBI, which registered an FIR and, as submitted, is in the process of filing a chargesheet. The petitioners have not been convicted by any Court of law. Due to the inaction of respondents No. 2 to 4, the petitioners are constrained to approach this Court for a direction facilitating the renewal of the registration certificate for a further period of five years. The petitioners had submitted their application for renewal well before the expiry of the previous registration on 31.12.2022. However, the respondents have arbitrarily

withheld the renewal on baseless and unjustified grounds. As a result of this official inaction, the Hotel is presently operating without a valid registration.

4 A reply has been filed on behalf of the Patnitop Development Authority (respondent No.2), wherein it is stated that the petitioners have neither approached nor applied to the Authority for a No Objection Certificate. Furthermore, respondents No. 3 and 4 have not communicated any request for issuance of NOC. It is further submitted that under the Jammu and Kashmir Registration of Tourism Trade Act, 1978, the Patnitop Development Authority is not authorized to issue any NOC for registration or renewal. As per SRO 460 dated 13.12.2010, the Director of Tourism, Jammu is the competent authority for such matters.

5 The Tourism Department has also filed a reply, stating that the petitioners, in their representation dated 23.12.2022 to the Director of Tourism, contended that their renewal was denied since 2019 on the pretext of requiring an NOC from the Patnitop Development Authority. Prior to July 2021, the Authority for registration/renewal in Udhampur District was with the Tourist Office, Batote. Despite requests, the Patnitop Development Authority did not issue the NOC. The Director of Tourism has since forwarded the petitioner's representation to the Administrative Department for further directions.

6 I have heard learned counsel for the parties and have perused the material on record.

7 The grievance of the petitioner is that the renewal of registration for the Hotel of the petitioners has unnecessarily been withheld on the ground of non-availability of a No Objection Certificate from the Patnitop

Development Authority, though the law does not envisage such a requirement. Learned counsel for the petitioner has submitted that the petitioners are a lawful registrant under the Act and has been operating a Hotel at Patnitop for several years. The renewal of registration was sought as per the provisions of the Act, but the respondents failed to act on the request, citing absence of NOC from the Patnitop Development Authority. It is submitted by learned counsel for the Patnitop Development Authority- Mr. Rajnesh Raina that neither the Jammu and Kashmir Registration of Tourist Trade Act, 1978 nor any rules framed thereunder provide for obtaining NOC from Patnitop Development Authority as a pre-requisite for renewal. SRO 460 (supra) clearly delegates power to the Director of Tourism as the competent authority for issuance and renewal of registration under the Act.

8 The controversy in the present case revolves around the legality of the requirement of an NOC from the Patnitop Development Authority for processing renewal under the Act.

9 The Jammu and Kashmir Registration of Tourist Trade Act, 1978 is a self-contained code that regulates the registration and regulation of tourist trade in the UT of Jammu and Kashmir. Section 3 of the Act mandates registration for persons carrying on business as a hotel-keepers, and Section 4 lays out the procedure for registration and renewal. There is no provision under the Act or the rules framed thereunder that requires an NOC from the Patnitop Development Authority or any other body apart from the Tourism Department. SRO 460 designates the Director of Tourism, Jammu/Kashmir as the competent authority for granting or renewing registration under the Act.

10 There is no provision either in the Act or in the rules framed thereunder which mandates production of an NOC from any local or development authority including the Patnitop Development Authority for registration or renewal. Sections 3 and 4 of the Act is relevant to the context and are reproduced as under:

3. Registration.

(1) Every person intending to carry on business of a dealer under this Act shall, before he commences such business, apply for registration to the prescribed authority in the prescribed manner. (2) Notwithstanding anything contained in sub-section (1) any person already carrying on business of selling any notified article in a tourist area on the date such article is notified under clause (j) of section 2 shall apply for registration under this Act within three months from the aforesaid date:

[Provided that where, before the commencement of the Jammu and Kashmir Registration of tourist Trade (Amendment) Act, 1982, any person as aforesaid could not apply registration within the time specified above, he shall so apply for registration within six months after such commencement:

Provided further that where any person as aforesaid has applied for registration within the period of three months from the date of issue of the first notification under clause (j) of section 2 and certificate of registration has been issued to him, such certificate of registration shall continue to be valid notwithstanding the rescission of the said notification but subject to other provisions of section 6 of this Act.]

(3) Every application made under sub-section (1) shall be disposed of within a period of three months from the date of receipt of the application failing which the application shall be deemed to have been accepted for registration.

4. Certificate of registration.

The prescribed authority shall, unless registration is refused under section 5, direct that the name and the particulars of the dealer be entered in the register maintained for purpose and shall issue a certificate of registration to the dealer in the prescribed form within a period of three months from the date of receipt of the application.

11 SRO 460 of 2010 dated 13.12.2010 is also reproduced hereunder:

“In exercise of the powers conferred by clause(m) of Section 2 of Jammu and Kashmir Registration of Tourist Trade Act, 1978 and in supersession of notification SRO 341, the Government hereby notify the authorities shown in column (2) of the subjoined schedule to be prescribed authorities for purpose of the provisions of the said Act as indicated in column(3) against each authority for purpose of the tourist areas shown in column (4) thereof:

S.No.	Name of officer	Section of Act	Tourist Areas
1	Director Tourism Jammu	All Sections of Act except Sections 30,32 and 33	All Tourist Areas of Jammu Division
2	Deputy Director Tourism Jammu	3 to 21,28,29,31 and 34 to 44	All Tourist Areas of Jammu District
3	Assistant Director Tourism National Highway	3 to 21,28,29,31 and 34 to 44	All Tourist Areas in Ramban Doda and Kishtwar Districts.
4	Assistant Director Tourism Katra	3 to 21,28,29,31 and 34 to 44	All Tourist Areas in Reasi District.
5	Assistant Director Tourism Rajouri	3 to 21,28,29,31 and 34 to 44	All Tourist Areas in Rajouri and Poonch Districts.
6	Tourist Officer Samba	3 to 21,28,29,31 and 34 to 44	All Tourist Areas in Kathua and Samba Districts.
7	Tourist Officer Udhampur	3 to 21,28,29,31 and 34 to 44	All Tourist Areas in Udhampur Districts.

12 In **State of Bihar v. Project Uchcha Vidya, Sikhsha Parishad**, AIR 2006 SC 693, the Supreme Court has held that where a statute prescribes a specific authority for a function, no other authority can usurp or interfere with that function by administrative instructions. Similarly, in **Bimal Nand Lal v. State of J&K**, (2011) 3 JKJ 123, this Court has held that an executive or administrative instruction cannot override or substitute the procedure laid down by a statute unless such delegation is expressly provided therein.

13 In view of the above analysis, this Court is of the considered view that the insistence of an NOC from Patnitop Development Authority is

without any statutory backing. Such a requirement, not being part of the Act or the rules, cannot be imposed by executive fiat. Consequently, the writ petition is allowed, and the following directions are issued:

(i). The Director of Tourism, Jammu (respondent No.3), is directed to consider and decide the petitioners' application for renewal of registration under the Act, strictly in accordance with law, within a period of four weeks from the date of receipt of a certified copy of this judgment.

(ii). If the petitioners are found eligible under the Act and the rules, the renewal shall be granted with retrospective effect from 01.01.2023, in continuity with the previous registration.

(iii). Respondent No.3 is restrained from insisting on the production of any NOC from the Patnitop Development Authority unless such a requirement is introduced through a valid amendment to the Act or the rules framed thereunder.

(MOKSHA KHAJURIA KAZMI)
JUDGE

Jammu
26.05.2025
Sanjeev

Whether approved for judgment: Yes/No